NEW MEMBER

Dr. C. O. Karunakaran (*Superintendent, Public Health Laboratory*) took the oath and signed the rolls.

Legislative Business—(*contd.*)

THE TRAVANCORE CHILDREN BILL—(*contd.*)

DR. B. K. PILLAI (*co-opted*): Yesterday I was opposing the amendment to the second clause of the Children Bill on the ground that such caning is prevalent in England and other western countries also. Further it has been found that in practice; some sort of fear in the case of children who are not amenable to reason is absolutely necessary. And under this section, the caning is calculated to enable the Court to give a punishment in lieu of fine. Fining, as everybody knows, is the slightest punishment under the Criminal law, and when a boy offender refused to pay a fine, it will be necessary to give him at least a caning. On all these grounds I oppose the amendment.

MR. K. G. KUNJUKRISHNA PILLAI: I would like to add a word or two to the discussion. Objection to caning has been raised on two specific grounds. These grounds are based one on psychology and another on sentiment. So far as the question based on psychology is concerned, I must readily concede that I am not a psychologist myself and therefore must take lessons from others who seem to know the subject. We have been told by Dr. B. K. Pillai who has had first hand training in England that psychologists do not agree that caning is unnecessary. I accept his opinion.

With regard to this question of sentiment, there is no doubt that caning is some what brutal. I do not deny the fact. But I am appealing to the experience of the honourable members of this House. I appeal to them to tell me what their experience is in the matter.

A large majority of members of this House must have dealt with children of their own or other peoples'. If they will place their hands on their hearts and rise up and oppose with their own voice the caning of children under all circumstances, the whole object of that section goes. Sir, on the other hand, I believe, as a man verging on elderliness myself, that caning of children is sometimes necessary and that there is very great truth in the dictum "spare the rod and spoil the child."

MR. K. K. CHELLAPPAN PILLAI: May I know, could the caning rod have a diameter of half an inch? Will he cane his own child?

MR. K. G. KUNJUKRISHNA PILLAI: If that is all which is agitating my friend he may come to my house this evening when I will give a demonstration on my child with a rod of that diameter for the sake of convincing my friend about the harmless nature of caning (*laughter.*)

PRESIDENT: Order, order. Such domestic details are fit subjects of conversation outside the precincts of this House.

MR. K. G. KUNJUKRISHNA PILLAI: I am sorry, Sir. So that I am asking for the considered opinion of this House from their own practical experience of every day life whether they would or would not cane a child "under any circumstances," note the stress of the last words. If

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they would, there is justification for this provision. Honourable members will see that this provision is intended as a last resort. Under Section 34 it is provided, when the court is satisfied that there was no escape from caning a child, the court may do it. That is the first condition. It is not intended as an ordinary punishment. It is not even intended as an extraordinary punishment. It is considered as the sole punishment when everything else fails. This is the first condition. Secondly this kind of caning has been restricted with conditions in the Penal Code. If the honourable members will refer to the Penal Code they will see that under Section 517 of that Code there is provision on the subject of caning.

PRESIDENT: I may probably shorten discussion. I have asked what is being done elsewhere. I am sure that in every public or private school in England caning is regarded as a necessary item of punishment and is resorted to daily. Both in England and America caning is one of the normal methods of dealing with children. I am telling this not only on my own authority but on other people's as well.

MR. K. G. KUNJUKRISHNA PILLAI: Sir, what about caning here. We have had our own share of caning in schools and have not been much the worse for it. So, under Section 517 of the Penal Code, provision is made for caning of juvenile offenders. That section is further limited by the present section in this way. The whole point is this. This section restricts the provision in the Penal Code in two ways. One is caning is given not in addition to but in lieu of other punishment; again this caning is given only as a last resort. As a matter of fact, this Bill has circumscribed further section 517 of the Penal Code. You will find on reference to the Criminal Procedure Code Section 323, that whipping shall be inflicted in a particular manner so far as the offenders are concerned in the case of a person under 16 years of age. The Legal Remembrancer stated the section under the English Act that whipping is given with a birch rod. We have further limited the powers of the Act in the case of whipping by saying that whipping shall be given only by cane. That must necessarily be less harmful than the rod. More pleasant whipping, Sir, could not be had any where in the world. If the honorable members object the sole punishment as a last resort in the case of recalcitrant persons on whom nothing else will appeal, we have come to a stage when no improvement could be made possible. What I therefore beg to submit for the consideration of the House is, firstly, stand on your own experience. Secondly, this extraordinary power would be exercised under extraordinary conditions and it limits further both the sections in the Criminal Procedure Code and Penal Code. Therefore I oppose the amendment.

MR. S. SANKARANARAYANAN TAMPI (*Karunagapalli* cum *Karthikapalli*): Sir, by way of reply I shall say a few words. Little did I expect when I moved the amendment that it would be opposed from the different quarters of the House. Mr. Moraes who opposed my amendment had very little to say about. He said that caning is necessary and

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[Mr. S. Sankaranarayanan Tampi.]

then another opposition came from the Legal Remembrancer who justified the preservation of this punishment in the Children Bill on the simple ground that this punishment finds a place in the Penal Code and many other codes in other parts of the world. It is quite right and I agree with him that this punishment exists in other parts of the world as a punishment. But it is no justification for saying that it must be preserved in an enactment or law which is intended pointedly, designedly for the purpose of reclaiming bad children into society and converting them as honest citizens of the State. Sir, there was a time when the State thought that killing a man was a method by which he could be reformed, rather, by no other way than killing could he be reformed. But now, before our very eyes, a proclamation has been enacted by His Highness the Maharaja abolishing capital punishment. Wisdom has dawned upon almost all the civilised members of this State and they have congratulated the measure in the State taking the view that a man could be reformed even without killing him. Similarly, this particular legislation which is intended designedly to improve the morale of children. Of course, there may be instances, I do not deny, where corporal punishment as such has to be given. But should it be that caning should be given as a punishment when the court of law is trying the offender. What is the moral effect, the psychological effect that it can infuse on the mind of the child in so far as it tends to improve that particular child and convert him as an honest citizen of the State. That is my point. I do not say in a hostel a warden should not be allowed to cane a child when it is found necessary or that the headmaster of a school should be denied that right when a child has to be caned. But here there are many provisions in the Statute, which say that even the conduct of the trial must be conducted in such a way as not to give publicity. What is the object of that provision? It is intended simply for the purpose of creating a moral reaction for improvement in the mind of the offender and not to further deteriorate himself. That, then, is the object. Similarly, there is another chapter which says that the proceedings of the court should not be published. If so, it is an offence. What is the object of this section in the Statute? If it is intended definitely that a child should improve and convert himself as an honest and law-abiding citizen of the State, I object to the retention of this punishment in this Statute. Of course caning may be administered. I do not deny in other parts of the world caning is preserved as a form of punishment. In public schools in England it may be necessary. My point is only this. The caning provision must be taken away from this Statute. A Magistrate should not be allowed to inflict caning as punishment on a youthful offender. I am really sorry that many of the members opposed my amendment without understanding the true spirit with which I moved it.

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Then, Sir, there was another honourable member who argued from the sentimental aspect of it that he was prepared to demonstrate caning on his own children, and all the rest of it. None of us would want him to do so simply for the sake of demonstration on our behalf. All that I want is simply to do away with caning, take away the preservation of caning as a form of punishment. So I would request honourable members to kindly consider this amendment in the aspect in which I had moved it.

The amendment was put to vote and lost.

MR. S. SANKARANARAYANAN TAMPI: Sir, I demand a poll. Accordingly a poll was taken with the following result.

AYES.—14.

1. Mr. K. Balakrishna Menon.
2. Mr. K.K. Chellappan Pillai.
3. Mr. V. I. Idicula.
4. Mr. E. K. Madhavan.
5. Mr. K. A. Mathew.
6. Mr. K. T. Michael.
7. Mr. S. Muthukaruppa Pillai.
8. Mr. P. S. Nataraja Pillai.
9. Mr. G. Parameswaran Pillai.
10. Mr. S. Sankaranarayanan Tampi.
11. Mr. P. O. Thomas.
12. Mr. A. P. Udayabhanu.
13. Mr. K. Varghese Ithac.
14. Mr. P. M. Varghese.

NOES.—44.

1. Mr. P. R. Atchutan.
2. Mr. A. K. Bhaskar.
3. Mr. M. K. Chandrasekhara Bhattathiri.
4. Mr. M. L. Janardhanan Pillai.
5. Mr. Chazhikattu Joseph.
6. Mr. K. G. Kesavan Nair.
7. Mr. T. T. Kesavan Sastri.
8. Mr. V. S. Krishna Pillai.
9. Mr. P. K. Kumaran.
10. Mr. P. K. Kunju.
11. Mr. P. K. Kuriakose.
12. Mr. C. S. Lekshmana Aiyar.
13. Mr. Varkala K. Madhavan.
14. Mr. R. Madhavan Nair.
15. Sahib Bahadur K. A. Mahomed.
16. Mr. P. S. Mahomed.
17. Mr. J. T. Morais.
18. Mr. K. R. Narayanan.
19. Mr. T. K. Narayana Pillai.
20. Sry. T. Narayani Amma.
21. Mr. A. Nesamony.
22. Mr. M. K. Nilakantan.
23. Mr. N. D. Parameswaran Namboothiri.
24. Mr. K. M. Paul.
25. Mr. J. E. A. Pereira.
26. Mr. M. R. Ramakrishna Pillai.
27. Mr. K. Sukumaran.
28. Mr. A. R. Sulaiman Sait.
29. Mr. S. Thiraviam Nadar.
30. Mr. D. Thomas.
31. Mr. J. W. Tolson.
32. Mr. V. K. Velappan Nair.
33. Mr. PuliyoorT. P. Velayudhan Pillai.
34. Mr. Brahmapuram P. Yesudian.
35. Mr. K. G. Kunjukrishna Pillai.
36. Mr. N. Ramakrishna Pillai.
37. Mr. S. Narayana Aiyar.
38. Mr. G. Narayanan Tampi.
39. Mr. H. C. Papworth.
40. Mr. P. Joseph John.
41. Rajyasevanirata C. O. Karunakaran.
42. Mr. K. R. Narayana Iyer.
43. Mr. S. N. Ure.
44. Mr. E. G. Salter.

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NEUTRALS.—4.

1. Mr. V. Gangadharan Nair.	3. Mr. V. Madhavan.
2. Mr. P. S. Gopala Pillai.	4. Mr. C. K. Sankara Pillai.

The amendment was declared lost, 14 voting for, 44 against.

The question that clauses 3 to 5 stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 6.

MR. S. SANKARANARAYANAN TAMPI: Sir, I beg to move the following amendment:—

"In sub clause (1) (a) line 3 delete the words "or a parent . . . . . guardianship" and substitute "or having a parent or guardian such person does not exercise regular and proper guardianship."

Here the wording of the Section is very difficult of understanding by the lawyer, much less by the ordinary man. It is worded like this:

"who (a) is found wandering and not having any home or settled place of abode, visible means of subsistence or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise regular and proper guardianship;"

"a child who is found wandering and not having any home or settled place of abode" That is one clause.

"or is found wandering and having no parent or guardian or a parant or guardian who does not exercise regular and proper guardianship."

That is the way in which it has to be analysed into clauses. Grammatically the last clause conveys exactly the opposite meaning of what it is intended to convey.

MR. N. RAMAKRISHNA PILLAI (*Legal Remembrancer to Government*): A similar expression finds a place in the English Act also.

PRESIDENT: With due deference to the English Act, I do not think it is good English. Whatever may be the expression in the English Act, I think necessary verbal alterations may be made in our Bill.

MR. K. G. KUNJUKRISHNA PILLAI: The words "or having a parent or guardian ....." may be substituted.

MR. S. SANKARANARAYANAN TAMPI: That is my amendment.

The amendment was put and carried.

The question that clause 6 as amended stands part of the Bill was put and carried.

The clause was added to the Bill.

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Clause 7.

MR. S. SANKARANARAYANAN TAMPI: Clause 7 reads thus :—

"Where the parent or guardian of a child proves to a court that he is unable to control the child and that he desires the child to be sent to a certified school, the court, if satisfied on inquiry that it is expedient so to deal with the child and that the parent or guardian understands the results which will follow, may order him to be sent to any such school."

". . . . . , and that the parent or guardian understands the results which will follow . . . . . ."

The words, " the parent or guardian understands the results that will follow " suggest that the result is something unhappy. Why should the parent understand the result which will follow? It would look as though the parent would not send the child if he understands the result. If it is not proved to the satisfaction of the court that the parent or guardian understands the results that will follow, he will never send the child to the school. That will take away the power of the court to send a child to certified school in case the parent does not understand the result that would follow.

PRESIDENT: When the parent applies to the court, it will find out whether he fully understands the results that will follow on acting up to the petition and that the petition is not the result of a bit of temper.

MR. S. SANKARANARAYANAN TAMPI: Still then, take an instance in which a parent refuses to understand the results that will follow.

PRESIDENT: Section 7 provides for a parent to go to a court and present a petition saying that he is unable to control the child and therefore the child should be sent to a certified school. Sometimes it may be due to domestic quarrels or due to the step mother's treatment. Suddenly due to a bit of anger, the parent may go to a court. Or he may be ill-advised. Then the court would tell him "do you mean to say that you are willing to lose control over the child for five or six years." It will try to understand the effect of such a departure on the parent. If the court is satisfied that the parent understands the results which will follow such a course, then it will order the child being sent to the certified school.

MR. S. SANKARANARAYANAN TAMPI: This should not be the form in which it should be expressed. It can be better expressed in other words. The court or the officer empowered to pass the order shall explain to the parent the results that would follow, or some such expression would make the section more logical.

MR. N. RAMAKRISHNA PILLAI: The one result of the action taken by the parent in taking the uncontrollable child to the court and asking it to send the child to a certified school is that he will be asked to meet the expenditure for the same. In the rules that will be framed in this behalf there will be a provision that the parent should provide for the maintenance of the child. Therefore, it is necessary that the court should make him understand the result of his asking to send the child to a certified school. That is the reason why it is stated that it must be made known to the parent the results that will follow.

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MR. S. SANKARANARAYANAN TAMPI: It could have been more carefully worded.

MR. A. P. UDAYABHANU: The parent or the guardian is asked to prove that he is unable to control the child.

PRESIDENT: A millionaire may say that he is unable to control a child. Why should that man not be made to pay something for the child.

MR. A. P. UDAYABHANU: The parent says that he is not able to control the child. Is it not in the interests of the State to send that child to the school and ask him to meet the expenses? Whether he is prepared to do it or not is another question. When once the parent has proved that he has no control over the child he should be sent to the certified school.

MR. S. SANKARANARAYANAN TAMPI: I do not press the amendment.

The question that clause 7 stands part of the Bill was put and carried.

The clause was added to the Bill.

Clause 8.

MR. S. SANKARANARAYANAN TAMPI: In moving this amendment I am prompted by reasons more than one. Here is a clause which has not given any explanation as to what would amount to wilful negligence on the part of the parent. My amendment is that in sub-clause (1) add the following as explanation (2) after numbering the present explanation as (1).

> "For the purposes of this section the parent of or guardian shall be deemed to have wilfully failed to provide adequate food, clothing, medical aid or lodging for the child if the court after proper enquiry is satisfied that at the time of such neglect or failure the parent or guardian was in possession of the means to protect and provide the child or that as a prudent and reasonable man he could have found the means, but not otherwise."

PRESIDENT: Does not the honourable member realise that the parent may illtreat a child other than by not providing meals. There may be other very serious ill-treatment; infliction of mental cruelty and torture.

MR. S. SANKARANARAYANAN TAMPI: Here the section deals with the wilful neglect of the child by the parent.

PRESIDENT: Or ill-treatment of the child.

MR. S. SANKARANARAYANAN TAMPI: I want to give an explanation to "wilful neglect".

PRESIDENT: I do not think the honourable member will be well advised to pursue the amendment. There are many ways of ill-treatment. There may be cases in which the father has married again or the mother has married again. In such cases there may be many other ways of cruelty being inflicted on the child. The honourable member's amendment does not provide for that.

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MR. S. SANKARANARAYANAN TAMPI: My amendment applies only to cases, in which the parent is guilty of neglect in providing food, medicine, clothing etc.,

PRESIDENT: Section 8 says :—

"Whoever having the actual charge or control over a child abandons, exposes or wilfully neglects or illtreats such child in a manner likely to cause such child unnecessary suffering or injury to his health..."

What is the trouble that the honourable member apprehends?

MR. S. SANKARANARAYANAN TAMPI; My amendment is to this effect. It is clear in itself. The parent shall provide adequate food, clothing, medical aid and such other things. This explanation is intended for cases in which the parent fails to do such things and not for ill-treatment or injury done to the child other than the providing of food, cloths &c. In a society the model of which we live in it will be impossible for all the parents to properly take care of their children. People in plenty to day are reduced to poverty tomorow. People in prosperity are being thrown to the realm of scarcity. Today I may be a rich man, but tomorrow I may be a poor man. On account of neglecting my child tomorrow, if I am rich today, I must not be punished. That is my point.

PRESIDENT: Then the question of wilful neglect will not arise.

MR. S. SANKARANARAYANAN TAMPI: There should be an explanation as to how a wilful nelect should be viewed by a court of law.

The amendment was put and lost.

The question that clause 8 stands part of the Bill was put and carried

The clause was added to the Bill.

Clauses 9 & 10.

The question that clauses 9 and 10 stand part of the Bill was put and carried.

The clauses were added to the Bill.

Clause 11.

MR. K. G. KESAVAN NAIR (*Changanacherry* cum *Peermade*): I beg to move the following amendment :—

In clause 11 delete the words "in any highway or other public place whether a building or not or on any licensed premises."

Chapter 3 deals with offences against the child. This clause deals with a particular kind of offence, *viz.*, administration of liquor or intoxicating drinks to children. As the section now stands the giving of liquor or intoxicating drinks in any public place is made an offence. The words I seek to delete are " in any highway or other public place whether a building or not or on any licensed premises". If these words are taken away, that anomaly will be over. For instance, any person

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[Mr. K. G. Kesavan Nair.]

as it is can give intoxicating drinks or liquor to a child in any house or private place. If our intention is to prevent the giving of liquor to a child why should we confine it to public places alone? Why should we allow grown up people to administer liquor to children in private places or houses? The question whether the person who commits that offence can be detected and be brought to book is a different matter. We cannot make a provision for that in this manner. I hope the honourable members will unanimously accept my amendment.

MR. N. RAMAKRISHNA PILLAI: It was thought inexpedient to make the administration of liquor to a child except in higway or public place an offence. Otherwise, it will lead to a lot of difficulties. The police will be empowered to arrest a person who is supposed to have given liquor to a child in a private house or residence. It will be extremely impolitic if the giving of intoxicating drinks to children is made an offence except in places of public resort; it will be unwise to empower the Police to arrest people who are supposed to have given liquor to children in private houses. To extend the provision in the manner now required was considered inexpendient. That is why it was confined to places in the highway. I suppose honourable members will not like the provision being extended to places like private houses.

PRESIDENT: I will appeal to the honourable members to consider this aspect of the matter also. The mischief sought to be dealt with by this section is that which is unfortunately to be noticed in front of toddy shops, or opium shops in certain places like Calcutta, the United Provinces, etc. In front of these shops children are allowed to stand outside, and when they cry or make any trouble, toddy or some sweet preparation of opium is given to the children. This kind of thing is very often resorted to by people. It is a public evil. To extend the provision in the sense intended by the honourable member would give power to the Police Officers and their subordinates who very often are found guilty of personal obliquities. Supposing the Police Officer enters a house and questions the inmates. "I am told that you give toddy to your children". If he proceeds then to lodge a complaint, it will lead to serious calamities.

MR. A. P. UDAYABHANU: Sir, cannot that be saved by making it a non-cognisable offence?

MR. N. RAMAKRISHNA PILLAI: Yes; but if somebody complains.

MR. A. P. UDAYABHANU: Sir, I support the amendment. Without this amendment coming in, the section would give freedom to wicked people to commit the offence. If we make it a non-congnisable offence the evil could be remedied.

MR. K. K. CHELLAPPAN PILLAI: Sir, I support the amendment. It is based on an Act promulgated in England. There, the giving or taking in of liquor is not generally considered an obnoxious practice and it is in that back ground that the Act was enacted. Here, that kind of thing is taboo.

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PRESIDENT: Where?

MR. K. K. CHELLAPPAN PILLAI: Here in India, though the Excise Department makes money, it is still taboo.

PRESIDENT: How is it tabooed? It is merely reprehensible, but allowed under Law.

MR. K. K. CHELLAPPAN PILLAI: I mean, socially. In society it is not very much appreciated even though the Excise Department has been making money by leaps and bounds by trading in intoxicating liquor. Here, in Travancore as well as in the rest of India it is not considered honourable to take liquor whereas in England it is the other way. They take liquor generally and the only safeguard provided is by making that penal in a highway or in a public place. Here, therefore, there is no difficulty to appreciate the fact that it should be made penal even in a private place. With regard to the argument that Police Officers would create difficulties if the Act is extended to bind private houses. I would say that there is sufficient materials in the whole Act for a Police Officer to do mischief. He is given powers to inspect private premises in certain cases. That discretion in the use of powers vested in him is expected, and we may hope that they use it in the best manner possible. I therefore hasten to support the amendment.

MR. T. K. NARAYANA PILLAI (*Neyyattinkara cum Trivandrum*): Sir, I oppose the amendment. My reason is that it is of no practical importance. We seldom come across a case in which a parent or guardian gives intoxicating drinks to a child in this country. As a matter of fact, I have never come across such a case either in the mofussil or in villages. A child is never given intoxicating drinks by elderly people in this country. As a matter of fact, even in the city, I have never come across a case in which a parent is known to have committed this offence. That being the case, there is absolutely no necessity in increasing the number of offences in our Statute book by adding one more offence. That will be giving the Police greater opportunities to charge-sheet persons. It is only just and proper that the scope of Police interference in these matters is limited.

MR. K. G. KUNJUKRISHNA PILLAI: Sir, I want to say a word on the suggestion of my friend that it may be made a non-cognisable offence. If it were to be so done, who is the person, who in all conscience, who will come forward and file a complaint in a court of law? Sir, on the other hand, this provision has another object in view. It is to prevent children from being demoralised by taking to liquor in the highway that the section is intended. I think the greater drunkard a parent is the less he is likely to give toddy or other intoxicating drinks to his children.

The question that in Clause 11 the words "in any highway or other public place whether a building or not or on any licensed premises" be deleted was put to vote and declared lost.

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The question that Clauses 11 to 17 stand part of the Bill was put to vote and carried.

Clauses 11 to 17 were added to the Bill.

Clause 18.

MR. S. SANKARANARAYANAN TAMPI: Sir, I move that in Clause 18, the following proviso may be added :

> "Provided however that the police officer or other authorised person, as the case may be, shall hand over the child to its parent or guardian immediately on such person making a demand in writing for the possession of the child and executing a bond with or without sureties as the police officer or authorised person may require, for the production of the child whenever required to do so."

Section 18 empowers a police officer to keep in custody a child in respect of whom an offence punishable under this Act or under chapter 16 of the Penal Code has been committed. It also gives authority to him to keep the child in custody until he is produced before a magistrate who has to take cognisance of the case. It may be that the Police officer or other authorised person may take honest care of the child. But, there may be instances where the authorised persons may not take as much care of the child as is required. It is true that it is only for a period of 24 hours that the child is kept in custody. But during that period those persons, who are expected to meticulously look to the safety of the child, may not be able to bestow as much care as is needed. The innocent parent would like to see that the child is handed over to him and the provision I seek to include in the Act is to the effect that the officer may hand over the child whenever the parent asks him to do so. Otherwise, it would be shocking to the parent or guardian. It is the right of the parent to get possession of his child. It is his fundamental right. With these words, I move this amendment for the acceptance of the House.

MR. C. K. SANKARA PILLAI (*Tiruvalla*): Sir, youthful offenders under this Section can be immediately taken into custody by the Police Officers even in cases of petty theft. Supposing the parent or guardian comes to know that the child has been taken into custody by the Police, without this proviso, the child would be kept under custody for atleast 24 hours. On the other hand, this proviso would serve the purpose of an interim bail. It is for the parent to execute a bond to produce the child whenever he is asked to produce it. So, without this proviso, there is no legal provision in this Bill to let the child on bail. The offence is not non-bailable. It is generally considered a bailable offence. Even here, the Police officer who takes the child into his custody has no jurisdiction to hand him over to the parent or guardian or to any body who takes care of it. With these words I support the amendment.

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MR. B. K. PILLAI: Sir, I oppose the amendment. This clause is purposely enacted to safeguard children who are ill-treated by guardians and against offences supposed to be committed under chapter 16 of the Travancore Penal Code, *viz.* offences against person. Therefore, it is absolutely undesirable that the child should again be given over to the parent who has been ill-treating him. Again, the section says that the child would be taken by the Police Inspector and I think we can safely rely on the honour and integrity of the Police Inspector. I therefore, object to this amendment.

MR. A. P. UDAYABHANU: Sir, In supporting the amendment, I wish to point out that one honourable member opposing it said that it is intended to safeguard the children against the parents. To say that it is to safeguard the children against the parents does not make any sense.

Again, the company of a Police Inspector or other Police Officers may not often be very holy company for the children and the parents will only be anxious to get hold of the child even before the twenty four hours elapse. As soon as the Police has taken custody of the child he must naturally look into the case from the point of view as to whether the parent has done any offence or not. And if the parents have not done any offence against the child it must be handed over to the parent. Even if they have, on the strength of sureties the child may be handed over.

MR. K. A. MOHAMED (*Quilon cum Kottarakara*): Sir, I support the amendment of Mr. Sankaranarayanan Tampi. It is so useful and beneficial. Any provision to save the child from the custody of the Police is to be welcomed. The whole theme of the Act is the welfare of the child. The amendment will facilitate the guardian to have the child in interim bail till the Court orders its production. Therefore there is absolutely no harm in accepting this amendment which is in consonance with the rest of the sections.

MR. K. G. KUNJUKRISHNA PILLAI: I am afraid, Sir, that the proviso has been drafted without understanding the full implications of the Section. This Section, for one thing, does not say that a Police Officer must do anything. It authorises a Police Officer in a certain contingency to use his discretion to take away the child. Let me illustrate this. Supposing a parent or a guardian commits an offence against the child, causes grievous hurt to the child, then the Police Officer may interfere. He may intervene and take the child away from the custody of the guardian to a place of safety. The honourable members who wanted this amendment forget that the primary functions of the Police Officer are not to take the child to a Police Station but they may take it to a place of safety. That is to say, if a Police Officer or any other person authorised in this behalf is doing his duties pooperly—and that is what we expect—he will take the child in the first instance away from the guardian who is inflicting this cruelty, and then take the child to a place of safety. An uncle or an aunt or a respectable friend or say, an honourable member of

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[Mr. K. G. Kunjukrishna Pillai]

the Legislature, who is residing in the locality concerned, may take custody of the child as a humanitarian measure. It is never intended that the child should be taken to the Police Station unless it be that the Police Officer cannot take him to any other place of safety. I insist that this provision was not inserted because.....

MR. T. K. NARAYANA PILLAI: Is not the home of the parent the best place of safety?

MR. K. G. KUNJUKRISHNA PILLAI: The question does not apply.

MR. A. P. UDAYABHANU: Is the offence committed by third person does not this Section apply?

MR. K. G. KUNJUKRISHNA PILLAI: In that case the Police Officer hands over the child to the parent or guardian. Under the Section it is nowhere stated that if an offence is committed in the house of the parent and the parent is helpless against the offender, the child shall be removed from the house and placed elsewhere. The first point is: who is the person that has committed the offence against the child? If it is the parent and the parent or guardian and if the parent or guardian does not surrender the child, what will happen. If it is a third party what would prevent the Police Officer in handing the child back to the parent or guardian for protection? What is there in the Section to prevent that. That is why I submit that this Section has not been considered in its proper perspective and its implication does not seem to have been understood.

I will illustrate again. The first consideration is that if the child should be ill-treated he may be ill-treated by the parent or guardian. That ill-treatment has to be met by punishment under the Children Act or by the Penal Code. Under the Penal Code, Chapter XVI relates to offences against the human body, which may consist of unnatural offences, grievous hurt or wrongful confinement and other aggravated forms of offences. If it is done by a third party, there is nothing to prevent the child being handed over to a parent under the Section. The place of safety may be the house itself if the parent or guardian is anxious to protect the child.

Secondly, as I have already stated, if the child is to be taken away from the house, the Police Station will become a place of safety only as a last resort. If the Inspector could not find any human being in the locality to take care of the child within twenty-four hours, it may be possible that he will have to go to the Police Station. The Police Officer has no axe to grind. He merely wants to see that the child is not further ill-treated till the matter is placed before the Court. I, therefore, submit that the amendment has been tabled without the fullest implication being considered and in view to my explanation—if it is found satisfactory by the honourable members—I beg the mover of the amendment to withdraw the amendment. The Section is so carefully worded that no harm is rendered to a child who is going to be protected by the parent.

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MR. S. SANKARANARAYANAN TAMPI: I am very thankful to the honourable member, the Advocate-General, for having made me understand the full implication of the Section. Though I cannot in toto withdraw the amendment I would ask the permission of the Chair, to suspend the standing order so as to allow me to insert another amendment to that Section.

RAJYASEVANIRATA S. CHATTANATHA KARAYALAR (*Deputy President*): What is that amendment?

MR. S. SANKARANARAYANAN TAMPI: The amendment is to add: "If the offence which is committed in respect of the child is not committed by the parent or guardian."

MR. N. RAMAKRISHNA PILLAI: That proviso also becomes unnecessary in view to the fact that the Section itself provides for such a contingency—

MR. S. SANKARANARAYANAN TAMPI: But the Section as such gives the discretion to the Police Officer or any other person.

MR. N. RAMAKRISHNA PILLAI: That is merely a discretion.

MR. S. SANKARANARAYANAN TAMPI: One cannot be so optimistic as to how that person may deal with the child. Of course, we are not so very optimistic. If that discretion is left to the authority.....

MR. N. RAMAKRISHNA PILLAI: If the Police Officer finds that the child's home is itself a place of safety.....

MR. S. SANKARANARAYANAN TAMPI: But you leave the discretion to the officer, *viz.*, to decide which is the best place of safety. That discretion should not be left to him.

MR. N. RAMAKRISHNA PILLAI: Some sort of discretion must be given to the Police Officer who takes hold of the child.

MR. S. SANKARANARAYANAN TAMPI: When the parent or guardian himself applies that the child must be surrendered.....

MR. N. RAMAKRISHNA PILLAI: There is no question of application. The Police Officer detains the child only for a short time. The final orders are to be passed by a Court of Law. Till that time, to ensure the safety of the child, the child has to be taken to a place of safety and if the Police Officer is sensible, he will take it to a place of safety. More than that, it is impossible to provide in a Section. That is why in the beginning itself it is stated that if the child's home is not a place of safety, if the child is found to have no place of safety to which it can be taken, the Police Officer takes him to a place of safety. There is nothing to prevent him to take the child to his house. If the parent himself comes forward and say that the home is safe, the Police Officer is not justified in taking him to another place because he has to take final orders from the Court of Law.

MR A. NESAMONY (*Kalkulam cum Vilavancode*): Sir, I rise to a point of order. Are we discussing the new amendment that has been proposed? Has the Chairman suspended the Standing Order for the purpose?

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RAJYASEVANIRATA S. CHATTANATHA KARAYALAR: The honourable Member wants to provide for a case where the offence has not been committed by the parent or guardian. He wants to provide that in such cases a request should be made by the parent or guardiau so that the child may be handed over to the parent or guardian.

MR. C. S. LAKSHMANA AIYAR (*Trivandrum*): Sir, I object to the amendment. A persual of the Section would clearly show that it applies only to cases where a parent neglects his duty and places his child in such a position that it is possible that anybody commits any offence so far as the child is concerned. It may be that circumstances may be such that the parent or guardian was not available to protect the child just then. In such cases, there is absolutely nothing in the Section to prevent the child from being handed over to the parent or guardian. Naturally, a persual of the Section would clearly indicate that it is not from any place of safety that the Police Officer comes across that he can remove a child but that the circumstances existing at the moment of his intervention, that would entitle him to remove the child from a place where he is unsafe to a place where he would be safe. Really, I doubt whether any amendment is necessary in the circumstances.

MR. S. SANKARANARAYANAH TAMPI: The social relations that exist in society as well as the laws that are made to be observed by the citizens of the State place upon the parents certain duties, responsibilities and obligations. A parent is responsible to the child right from the date of its birth to maintain him, to educate him and to pay any fine if any offence is committed by him and thus to take care of him. The law enforces such obligations, responsibilities and duties. It is the fundamental right of, parent or guardian, according to all recognized principles of law and justice, to maintain that he is the fiittest person and has the best right to possession and custody of the child. Here is a case in which an offence may be committed in respect of a child even without any neglect on the part of the parent or guardiau. Such instances may not be rare. The proviso provides only for cases in which a parent or guardian himself does not commit the offence on the child. In such cases also the Police Officer may remove him and place the child in his custody. The Section as such gives wide discretion to the Police Officer in that he can keep the offender in any place he likes and thus denying the right of the parent or guardian for possession of the child. If this honourable House is of the opinion that the fundamental right of the parent or guardian has to be denied and that the Police Officer may be given discretion in the matter, the House may vote against the amendment.

MR. P. S. MOHAMMED (*Nominated*): Has the Chair given permission?

RAJYASEVANIRATA S. CHATTANATHA KARAYALAR: I have allowed it.

The question is whether Mr. Tampi's amendment is to be accepted or not.

The amendmsnt was put to vote and lost.

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MR. S. SANKARANARAYANAN TAMPI: I demand a poll.

The poll was taken when the House divided as follows:—

AYES—18.

1.	Mr. Chazhikattu Joseph	11.	Mr. Varkala K. Madhavan
2.	,, K. K. Chellappan Pillai	12.	,, K. A. Mahomed
3.	,, P. S. Nataraja Pillai	13.	,, K. T. Michael
4.	,, K. A. Mathew	14.	,, P. M. Vargheese
5.	,, P. K. Kunju	15.	,, V. I. Idiculla
6.	,, A. P. Udayabhanu	16.	,, G. Parameswaran Pillai
7.	,, C. K. Sankara Pillai	17.	,, S. Sankaranarayanan Tampi
8.	,, T. K. Narayana Pillai	18.	,, K. Vargheese Ithac.
9.	,, K. G. Kesavan Nair		
10.	,, P. K. Kuriakose		

NOES—33.

1.	Mr. P. C. Adichan	17.	Mr. M. K. Mahomed
2.	,, P. R. Atchutan	18.	,, P. S. Mahomed
3.	,, V. Gangadharan Nair	19.	,, K. R. Narayanan
4.	,, P. S. Gopala Pillai	20.	,, S. Narayana Aiyar
5.	,, M. L. Janardhana Pillai	21.	,, K. R. Narayana Aiyar
6.	,, P. Joseph John	22.	,, G. Narayanan Tampi
7.	,, K. C. Karunakaran	23.	,, H. C. Papworth
8.	Rajyasevanirata Dr. C. O. Karunakaran	24.	,, J. E. A. Pereira.
		25.	,, N. Ramakrishna Pillai
9.	Mr. T. T. Kesavan Sastri	26.	,, E. G. Salter
10.	,, P. K. Kumaran	27.	,, K. Sukumaran
11.	,, K. G. Kunjukrishna Pillai	28.	,, S. Thiravium Nadar
		29.	,, J. W. Tolson
12.	,, C. S. Lakshmana Aiyar	30.	,, S. N. Ure
13.	,, V. Madhavan	31.	,, V. K. Velappan Nair
14.	,, E. K. Madhavan	32.	,, Puliyoor T. P. Velayudhan Pillai
15.	,, Kadakkavoor P. Madhavan	33.	,, Brahmapuram P. Yesudian
16.	,, R. Madhavan Nair		

NEUTRALS—2.

1.	Mr. D. Parameswaran Namboodiri	2.	Mr. J. T. Morais.

The amendment was lost.

The question that Clause 18 do stand part of the Bill was put and carried.

Clause 18 was added to the Bill.

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Clause 19.

MR. S. SANKARANARAYANAN TAMPI: Sir, I move in sub-clause (6) line 2 between the words "or other fit person order" and 'that the child shall be sent to a certified school" insert the words "for reasons to be recorded in writing."

Preferably only in a case where the child can be left to the care of the parents or guardian, the parent or guardian is the fittest person in regard to the matter. I request the honourable House to support my amendment.

MR. N. RAMAKRISHNA PILLAI: I oppose the amendment. Sub-clause (4) requires that every order should be in writing.

MR. S. SANKARANARAYANAN TAMPI: The honourable Legal Remembrancer does not seem to have understood what I said.

MR. N. RAMAKRISHNA PILLAI: I am coming to that point; sub-clause (4) says that the order is to be in writing. The honourable member wants that the reasons also should be stated in the order. It is for the purpose of showing that the reasons also should be mentioned that the amendment is brought. The orders under the Section are appealable. Whenever an order is passed it is liable to be revised by an appellate Court so that unless the Magistrate gives his reasons it will not be possible for an Appellate Court to arrive at a correct conclusion. The Magistrate is bound to give reasons because the order is an appealable one, and also because under sub-section (4) the order is to be in writing.

I suppose no Magistrate will record an order without stating the grounds upon which that order is passed. I believe that the honourable member will be satisfied with this explanation.

MR. S. SANKARANARAYANAN TAMPI: I do not want to press that amendment.

The question that clauses 19 to 24 do stand part of the Bill was put and carried.

Clauses 19 to 24 were added to the Bill.

Clause 25.

MR. S. SANKARANARAYANAN TAMPI: Sir, I move that in sub-clause (4) in continuation add the following "or was removed without his consent".

There may be instances where the child will be removed forcibly. I therefore move this amendment.

MR. N. RAMAKRISHNA PILLAI: I oppose the amendment. I do not understand why this amendment should be made to this section because clause (4) itself says that the attendance of the parent of a child shall not be required under this section, in any case where the child was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of the Court. Sub-clause (4) provides for the cases where the child is removed from the custody of the parent by an order of the Court. Therefore I do not see any reason why such an amendment should be proposed.

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MR. S. SANKARANARAYANAN TAMPI: There may be instances in which a man other than a parent or guardian may remove the child forcibly by an order of the Court. In such cases.....

MR. N. RAMAKRISHNA PILLAI: The section does not provide for that. It provides only for cases where the child is removed by an order of a court.

The child is removed to a Court only when there is an order. It is wrong to say that the child has been removed without the consent of the parent or guardian when there is an order of Court and that provision should therefore be made for cases of removal without consent.

MR. S. SANKARANARAYANAN TAMPI: The attendance of the parent or child shall not be required under this section. The presence of the parent is required by the Court in cases where the child commits an offence. The parents are asked to appear by an order of the Court.

MR. N. RAMAKRISHNA PILLAI: This section provides for attendance of a parent of a child who is charged with an offence. The section concerns itself only with that. It provides for the attendance of a parent in Court when a child is being tried. Now the child is brought to a Court only by an order of the Court. When a parent himself takes a child to the Court there is no need for any enquiry under the section. The case where a child is taken forcibly from the custody of the parent is a different matter. That is not the matter with which the section deals. This is a provision that permits the parent of a child to attend a Court in certain cases. One of the cases is when there is an order of the Court. Incidentally I may also say that the last sub-section is a reproduction word for word of Section 34 of the English Youthful Offenders Act. There the object of making that provision was to enable the parent of a child to attend Court when the child was being tried. It is not right to say that that provision should be made for cases of removal without consent. I therefore oppose the amendment.

MR. S. SANKARANARAYANAN TAMPI: "Removed from the custody or charge of a parent by an order of a court". That is all I said in the section. The order may be of a Court which tries the offence, or it may be of a Civil Court. There may be instances in which a Civil Court may order the removal of a child, for example under the Guardian and Wards Act. All those instances will be covered if this amendment is accepted.

MR. C. K. SANKARA PILLAI: This seems to be a discussion between the mover and the Legal Remembrancer.

MR. K. G. KUNJUKRISHNA PILLAI: I would submit that we are not anxious to stand on technical points of order in a social legislation like this. Therefore we welcome all orderly suggestions, and I may add that they will be accepted if we feel they are reasonable. This amendment seems to me to have two defects. One is the legal defect in

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[Mr. K. G. Kunjukrishna Pillai]

framing an amendment. An amendment must be so framed that it must arise out of the Section. You cannot, by an amendment, provide for matters which would not come within the purview of this Section. That was what the Legal Remembrancer was making plain. The Section relates only to cases where a child is taken from the custody of a parent to a court and then the court may ask the parent or guardian to come, in a particular case if there is already an order against it. That is the technical difficulty. This does not seem to have been considered by the mover.

Now suppose you accept the amendment "or was removed without his consent", than it becomes a question of fact.

Then the court will have to take evidence. The guardian will come and put in a petition that the child was taken without his consent. Another man might say that he was taken with the consent of the guardian. Then incidental issues will arise and the court will be dragged on to take evidence further to verify the evidence. That is the second difficulty.

Supposing my honourable friend wanted such a provision if possible to be inserted, then it is another matter. We can make the provision as an independent clause. But if under this clause we bring in this amendment then the court will be dragged on to make incidental enquiries. This Section is intended solely for the purpose mentioned in the first clause of the Section. "Where a child is charged with any offence or is brought before a court on an application for an order to send him to a certified school his parent or guardian in any case....." So, that is the main clause. The sub-section merely says that the attendance shall not be required if the parent has shown himself incapable of doing so. Therefore my submission is that the amendment, however well-intentioned it may be, is ill-timed and cannot fit in with the scope of the section. I hope I have made myself understood.

MR. S. SANKARANARYANAN TAMPI: In spite of the elucidations given by the Advocate General, I am unable to accept his arguments. Questioning the convincibility of his arguments, I do not press my motion.

The question that Clauses 25 to 31 of the Bill stands part of the Bill was put and carried.

Clauses 25 to 31 were added to the Bill.

Clause 32.

MR. S. SANKARANARAYANAN TAMPI: In sub-clause (1) delete the words occurring after "or" and insert "the court after giving reasonable opportunity to the parent to adduce evidence in this behalf is satisfied that the non-exercise of due care on the part of the guardian or parent was solely responsible for the commission of the offence by the child." Section 32 throws the responsibility upon the parent to pay the fine for an offence committed by the child. I want to make the position clearer by stating definitely in which all cases a parent can be made responsible. Here is court calling

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upon a parent to adduce evidence that 'there was no neglect to exercise due care on the part of the parent'. The section throws a sort of vicarious liability. There may be a child who is criminally-minded; and, of course, a society as the present one, is liable to produce more criminally minded children. The social inequalities that exist, the competition and the imperialist mentality of people in power, all these will only conduce to produce more criminally inclined people than honest citizens. In a society like this, if a person happens, by accident to become a parent, it is an accident that a particular child is born to a particular person he has, for being unfortunately the parent, to pay fine for the offence committed by a child. It would be rather very hard. But yet, so long as the present social laws exist, the statute is perfectly justified in imposing upon the parent the liability to pay the fine. Still it would be very hard if a savings clause as contemplated by the amendment does not come in. Here I have added, that it must be proved to the satisfaction of the Court and the parent must be given an opportunity to prove that he had exercised due care upon the child and that it was even inspite of his care that the child committed the offence. And then he will be exempted from the liability of the fine.

MR. N. RAMAKRISHNA PILLAI: The section, as it is, is far more benficial to the parent than the amendment seems to be. According to the Section, the parent has only to show to the Court that he has not conduced to the offence by not exercising due diligence. I suppose the amendmant seeks to throw the burden of proof on the prosecution. It also throws upon the parent the duty of adducing evidence to show that it was not 'non-exercise of due care on the part of the guardian or parent.....'. This, is, in the first place, quite contrary to justice and sound reason. The Section says that it deals with a youthful offender who is sentenced to payment of fine and when the boy is unable to pay the fine, the parent has to pay the fine. I may also point out that a similar provision exists not only in the English Act but also in the Bombay Act. Under the Section, the parent has only to show that he had exercised due control over the child and that he has conduced to the offence. I suppose there is a moral duty cast upon a parent to exercise due care and caution and a sort of control over his child. The Section says that the parent should show that he has done this. Is there any injustice in throwing this burden on him. To say that this burden should be borne by somebody else is unreasonable. I submit that both on grounds of reason and on principle, the burden of proof should be on the parent. And on this ground, I oppose the amendment.

MR. S. SANKARANARAYANAN TAMPI: As the Legal Remembrancer has definitely stated, my object was to throw the burden on the prosecution. That was actually my object. Take the case of a prosecution for offences committed by persons other than children. It is the duty of the prosecution to prove the charge. According to the existing laws of evidence in Criminal cases, the prosecution has to prove, beyond an

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atom of doubt, the guilt of the accused. Here is a case where we deal with the offence committed by a child and the importation of vicarious liability to the parent to pay the fine for the offence of the child. Therefore on principles of equity and on the fundamental principles of the laws of evidence, it is only in the fitness of things that the burden of proof should be on the prosecution. That is my object. But I withdraw my amendment, as in the present state of society the responsibility is on the parent for being accidentally the parent.

The question that Clauses 32 and 33 do stand part of the Bill, was put and carried.

The Clauses were added to the Bill.

Clause 34.

MR. S. SANKARANARAYANAN TAMPI: I do not move these amendments, because they are only corollaries to the first amendment.

The question that Clauses 34 to 39 do stand part of the Bill was put and carried.

Clauses 34 to 39 were added to the Bill.

Clause 40.

MR. B. K. PILLAI: I move the following amendment:

Add the following as sub-clause (b):

"(b) (i) when a child or youthful offender ordered for detention in a certified school escapes from the custody of that school, it shall be lawful for a police officer to arrest him without warrant and without the order of a Magistrate and produce him before a court of competent jurisdiction.

(ii) when such a child or youthful offender escapes from the supervision of any authority, institution, society or person under whose supervision he has been permitted to remain or live by licence, he may be apprehended on a warrant issued by a Magistrate and produced before him."

MR. N. RAMAKRISHNA PILLAI: If the wording is changed as I would propose, I have no objection to accept the amendment. I would re-word it as follows:

Re-number Clause 40 as 40 (a) and add the following:

"(b) Any child or youthful offender referred to in sub-section (i) who escapes from a certified school may be arrested by any Police officer without warrant and produced before the Magistrate to be dealt with under that sub-section.

(c) Any child or youthful offender referred to in sub-section (i) who escapes from any person with whom he is placed out on licence or from the custody of the person to whose care he is committed or being absent on leave fails to return may be arrested by any Police Officer under a warrant from the Magistrate mentioned in sub-section (i) and produced before him to be dealt with under that sub-section."

MR. B. K. PILLAI: I accept the amendment. A similar provision was in existence under the Reformatory Act too. I propose that the House may accept the amendment.

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The question that the amendment proposed by Mr. B. K. Pillai as re-worded by Mr. N. Ramakrishna Pillai be accepted, was put and carried.

The question that Clause 40 as amended stands part of the Bill, was put and carried.

Clause 40 was added to the Bill.

The question that Clauses 41 to 66 do stand part of the Bill, was put and carried.

Clauses 41 to 66 were added to the Bill.

The question that the preamble and title do stand part of the Bill was put and carried. The preamble and title were added to the Bill.

MR. N. RAMAKRISHNA PILLAI: I move that the Bill, as amended, be passed.

MR. S. NARAYANA AIYAR: I second it.

The question was put and carried.

The Bill was passed.

The House rose for lunch at 2 p. m.

The House re-assembled at 3 P. M.

NEW MEMBERS.

The following members took the oath and signed the Rolls :—

1. Mr. P. A. Kasim, (Director of Industries.)
2. Mr. A. Narayanan Tampi, (Director of Public Instruction.)

THE TRAVANCORE BORSTAL SCHOOLS BILL.

MR. N. RAMAKRISHNA PILLAI: Sir, I beg to present the report of the Select Committee on the Travancore Borstal Schools Bill and beg to move that the Bill be taken into consideration.

MR. S. NARAYANA AIYAR: I second it.

MR. M. L. JANARDHANAN PILLAI: Sir, before proceeding to the Legislative business, may I make one suggestion? If the Chair would permit and make it possible for the House to discuss the Public Service Commissioner's report now and if that arrangement will not interfere with the agenda of the day's meeting, I think it would be a great help for the members.

PRESIDENT: The Travancore Local Authorities Loans Bill which comes after the Borstal Schools Bill is a very important measure. I never anticipated that legislative business will take up so much time as has happened now. Will the Legal Remembrancer be able to say whether the Local Authorities Loans Bill could wait until the next session?

MR. N. RAMAKRISHNA PILLAI: As far as the Borstal Schools Bill is concerned there are only very few amendments, and as for the Travancore Local Authorities Loans Bill also the same is the case. There is only one important amendment in respect of clause 3.

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